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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,053	02/21/2002	Kenneth Houston	DR-332J	6756

7590

07/11/2005

Iandiorio & Teska
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EXAMINER

BEISNER, WILLIAM H

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/080,053

Applicant(s)

HOUSTON ET AL.

Examiner

William H. Beisner

Art Unit

1744

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 June 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 19-37.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE


8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


William H. Beisner
Primary Examiner
Art Unit: 1744

Continuation of 3. NOTE: The proposed amendment to claim 19 that incorporates the limitations of claim 20 raises new issues that would require further consideration and/or search because the combination of the limitation of claim 20 with the limitations of dependent claims 22-37 have not be previously considered and/or addressed in the prosecution of the instant application .

Continuation of 11. does NOT place the application in condition for allowance because: With respect to the prior art rejections currently of record, Applicants advance the following arguments: With respect to the 35 USC 102 rejection of record over the reference of Park et al., Applicants argue that Park et al. does not use the word "seal"; further argues that a sensor that is "dipped into a reaction cell" is not sealed in the vessel; and also argues that the plug referred to in the reference is an electrical plug as evidenced by the submitted website printouts. In response while the reference of Park et al. does not specifically employ the language "seal" the Examiner is of the position that the disclosure of Figure 1 and reference to a plug conveys to one of ordinary skill in the art that the cell is sealed. Figure 1 shows that the top of the reaction cell (e) is closed by the dip holder structure. It is not clear how one can conclude that a dip holder is not capable of sealing the cell, especially, since applicants' own invention involves dipping the sensor within the vessel (See Figure 1 of the instant application). Finally, the evidence merely establishes that the analyzer would include a plug for connection to an AC power source. It is not seen how reference to this plug would imply that the plug recited in the reference of Park et al. is an AC plug. With respect to the rejection of the claims over the combination of the references of Park et al. with Qu et al. or He et al., Applicants argue that neither Qu et al. nor He et al. use the word "seal" and do not provide evidence to combine the references. In response, the Examiner is of the position that one having ordinary skill in the art and looking at the disclosures of the references of Qu et al. and/or He et al. would recognize that the elements (plugs) shown in Figure 1 of each reference is providing a seal with respect to the vessel and the electrical connection external to the vessel. The Examiner even further advances that if not inherent in the disclosure of these references, it would have been obvious to one of ordinary skill in the art to ensure the vessel is sealed so as to prevent contamination of the contents that would foul the test results. In terms of motivation, one of ordinary skill in the art would recognize that the dip holders of either of the references of Qu et al. or He et al. can be used in the reaction cell of the primary reference, especially, since the figure of the reference of Park et al. is not clear as to the structural cooperation of the dip holder and vessel as argued by applicants. The references of Qu et al. and He et al. clarify known structural elements for providing or dipping the crystal within a vessel which is required of the reference of Park et al. With respect to the reference of Karube et al., Applicants argue that the reference teaches away from a sealed system because the reference requires solutions to flow into and out of the system. In response, the reference of Karube et al. was relied upon a merely a tertiary teaching that establishes that the use of an array of sensors are known and can be used. In this case, one of ordinary skill in the art would recognize in view of the disclosure of Karube et al. that additional microorganisms could be detected by the system of the primary reference by using an array of sensors. Furthermore, the claimed "seal" does not preclude the flow of fluids into or out of the vessel. Note, Applicants' own specification discusses the use of a pump system (210) for the circulation of culture medium while the vessel is sealed. With respect to the references of Qu et al. and He et al., while the references may be performing different assays, both of these references were merely relied upon to establish that crystal sensors can be dipped within a reaction vessel while maintaining a seal as required of the instant claims. .